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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,518	07/18/2003	Margaret F. Hudson	10704-8 MIS:jb	1166

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EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/621,518

Applicant(s)

HUDSON ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 20-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I in the reply filed on 9/7/04 is acknowledged. The traversal is on the ground(s) that there is no extra burden due to both groups being classified in 426/94. This is not found persuasive because the entire search required for groups is not the same. In addition, the strategy required for searching the product from that of the process.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5, 7, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rapp et al.

Rapp et al discloses a food product comprising a mass of scrambled eggs (including albumen) , spices/condiments (i.e. seasoning), and gelatin (col. 3, lines 34-65; col. 4, lines 47-50; col. 5, lines 8-25), wherein said mass is coated with a batter coating which includes breading (col. 5, line 67 – col. 6, line 16) and a predusting dry binder mixture (col. 5, lines 36-40)

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 4, 6, 8, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp et al.

The claims further call for the product having an elongate shape. Although Rapp et al discloses said egg food being “shaped into a desired portion size and shape” (col. 5, lines 61-63), same is silent regarding an elongated shape per se. However, batter coated foods are known to have elongated shapes, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have made the egg product of Rapp et al any desired shape including an elongated shape as a matter of, for example, aesthetic preference.

The claims further call for salt and pepper as the seasonings. Rapp et al further discloses salt in the ingredients of the Example. Both salt and pepper are notoriously

well known seasonings and well known for use in making scrambled eggs and other egg products. It would have been further obvious to have included such seasonings for their notoriously well known purpose of seasoning and to have used same for such purpose in the Rapp et al egg product.

The claims further call for the amount of salt and pepper used, the amount of predusting material (i.e. binder) used, the amount of the core portion with respect to the whole product and the amount of gelatin/albumen with respect to the core. However, it is not seen where such amounts would provide for a patentable distinction.

Determination of such amounts to provide, for example, a product having a stable structure, would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such amounts through routine experimental optimization.

It should be further noted that Rapp et al discloses the inclusion of various product assistance ingredients including edible oil, xanthan gum, water, and modified starch (e.g. Example).

6. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp et al (as set forth in paragraph 5) taken together with Heick et al.

Rapp et al is silent regarding the use of citric acid, cheese, and skim milk powder in the product claimed as well as the particular amounts of all such product assistance ingredients and other food ingredients (cheese, bacon, etc.). However, it is known to employ cheese, skim milk, and citric acid in scrambled eggs and other egg recipes as taught, for example, in Heick et al (see Examples and claims). Absent a showing of

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unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have included same as well known ingredients as a matter of preference depending on, for example, taste desired, and, furthermore, with respect to citric acid, as a preserving agent. As for the amounts of these and other ingredients employed, it is not seen where same would provide for a patentable distinction.

Determination of such amounts to provide, for example, a product having a certain flavor or array of flavors, would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such amounts through routine experimental optimization.

It should be further noted that Rapp et al discloses the addition of other particulates such as bacon and onion in the core portion of the product (col. 5, line 52).

7. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp et al (as applied in paragraph 3) taken together with either one of EP 1155627 or WO 02/080703.

The claims further call for the inclusion of eggs having certain amounts of omega-3 fatty acid. Eggs having increased amounts of omega-3 fatty acids is well known as taught, for example, by either one of EP 1155627 or WO 02/080703. Absent a showing of unexpected results, it would have been further obvious to have employed same for their art recognized health benefits with respect to the choice of egg used. As for the amount of omega-3 fatty acids in said eggs, it is not seen where such amount would provide for a patentable distinction. Determination of such amount would have been well within the purview of a skilled artisan, and it would have been further obvious

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to have arrived at such amounts through routine experimental optimization as a matter of degree of this healthy benefit desired in said eggs.

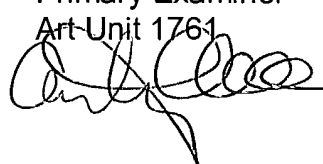
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier

Anthony Weier  
Primary Examiner  
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September 28, 2004